

1 announcing.

2 Q Okay. Now, as far as the announcing part of the
3 responsibilities, in all -- in the case of all the announcers,
4 did, did that announcing include programming of a -- in all
5 cases either programming of a call-in nature, a worship event
6 or a discussion program?

7 A To the best of my recollection, there were very few
8 times in the broadcast week at KFUD-AM where those kinds of
9 programs were not broadcast. That was, that was standard fare
10 for the radio station and so chances are every announcer at
11 one time or another was involved in announcing those things.

12 Q If -- Reverend Devantier, if you could turn to Mass
13 Media Bureau Exhibit 14. I believe you testified earlier in
14 response to a question by Mr. Honig that you saw and reviewed
15 this document prior to its filing. Is that correct?

16 A Yes, that is correct.

17 Q If you look at page 13, that is, the handwritten
18 page 13 on the bottom right corner. Now, there it indicates
19 that the director of development for KFUD-AM and the director
20 of operations for both stations are required to have Lutheran
21 theological backgrounds. Do you agree with that sentence?

22 A Yes, I do, as they were constituted at the time, and
23 I think that's consistent with the license period as well.

24 Q Is the assistant director of development also
25 required to have -- was at that time that person required to

1 have that Lutheran background?

2 A Yes.

3 Q Was the reason the same for the three positions
4 pretty much?

5 A The positions of course varied considerably, but the
6 reasons were probably similar.

7 Q Okay. Now, the director of development position is
8 a fund-raising position. Isn't that correct?

9 A That's correct.

10 Q Now, there's been some testimony about position
11 descriptions and essential qualifications and desirable
12 qualifications. In your understanding, what is the difference
13 between -- let me correct that. Not in your understanding,
14 but in, in the stations' policy, what is the difference
15 between an essential qualification and a desirable
16 qualification?

17 A My understanding and the understanding that I
18 believe the church body has with regard to this is that
19 essential qualifications are those without which an individual
20 would, would have considerable difficulty performing the task.
21 Desirable qualification is a trait, characteristic,
22 experience, whatever it may be that would enhance the
23 individual's ability to perform the task.

24 Q Now, when the station had a position in which a
25 certain factor was a desirable qualification, would that

1 factor be listed in advertisements or other announcements of
2 the availability of that position?

3 A I don't know. I don't recall specific instances.

4 Q Now, you testified earlier I think in answer to a
5 question by Mr. Honig that there was -- that one of the
6 desirable factors for salespeople in the FM station was
7 classical music knowledge. Is that correct?

8 A That's correct.

9 Q What was the reason that the station had that
10 preference?

11 A Several reasons. One, the, the advice or counsel we
12 received from concert music broadcast sales and two, the, the
13 conviction that grew out of experience at the radio station,
14 those working on the air, those working with programming and
15 the like, the conviction that it would be to our advantage
16 from a business point of view, from a sales point of view to
17 have salespersons who could speak the language well and
18 understand the product well.

19 Q During the license term was there ever a change in
20 the conviction at the -- in the management of the station,
21 that conviction that you just spoke?

22 A At the end of the license renewal period the -- as I
23 recall, the conviction was still there and many on the staff
24 continued to believe that it was, that it was very helpful for
25 the station to have people with that experience, background

1 and knowledge. But there was a growing recognition of the
2 fact that, that it wasn't always possible to find people with
3 that qualification and that there were others who could
4 perhaps perform well as salespeople for KFUD-FM who did not
5 have all of those traits, characteristics and experiences.

6 Q In fact, during the license term, there were
7 salespeople hired without those qualifications weren't there?

8 A That's correct.

9 Q Was there ever a requirement that applicants for
10 sales positions have knowledge of a foreign language?

11 A Not to my knowledge. That was never a requirement.

12 Q Was there ever a preference that, that salespeople
13 know a foreign language?

14 A Not a foreign language. The reference is probably
15 one to a familiarity with the classical music repertoire which
16 does include a lot of foreign language compositions, composers
17 and the like.

18 Q What about announcers in the FM station? Was there
19 a requirement that they have a familiarity with foreign --
20 with a foreign language?

21 A To the best of my recollection, we looked for
22 individuals who, who came to the station with that knowledge
23 and that was to the station's advantage. Training an
24 individual announcer in all of the pronunciations required in
25 the classical music repertoire would take quite a while.

1 Q And that is because the repertoire includes words in
2 a, in a foreign language?

3 A Yes.

4 JUDGE STEINBERG: I'm a little confused. Maybe I,
5 maybe I missed something there. When you say knowledge of
6 foreign language, do you mean let's say fluency in German or
7 fluency in French? What do you mean when, when you said that?
8 The way I heard it -- I'm not going to say the way I heard it.
9 But I just want to know, did -- so the station did not expect
10 fluency in a foreign language?

11 WITNESS: That's --

12 JUDGE STEINBERG: I don't mean expect. Require.

13 WITNESS: That's correct.

14 JUDGE STEINBERG: Okay, but if someone had -- it's
15 more -- was, was it more familiarity with the way classical
16 music terms are expressed? Well, why don't you, why don't you
17 explain what you meant by, by the answer? I was hearing, I
18 was hearing the answer in terms of fluency in a foreign
19 language and I don't think that's what you meant.

20 WITNESS: No, I think you were very close. Fluency
21 in a foreign language was never required, but the ability to
22 pronounce terms frequently associated with classical music
23 many of which had foreign language origins was, was important
24 to the radio station. Not a specific foreign language, but
25 the ability to work with a variety of foreign language terms.

1 JUDGE STEINBERG: So -- well, I'm going to withdraw
2 that. Mr. Laden?

3 BY MS. LADEN:

4 Q Now, you mentioned the standing committee for
5 broadcast. If you could turn to your testimony at, at --
6 which is Exhibit 7 at Attachment 1. Can you explain to me
7 about the standing committee for broadcast -- I note that it's
8 not listed in these charts and I'm not sure how it fits in, in
9 the organization.

10 A I will try, Ms. Laden.

11 Q Thank you.

12 A Prior to 1986 -- well, at the top of that chart, the
13 board for Lutheran radio was a church body board charged with
14 the responsibility of operating the radio stations. In 1986
15 that board, or the responsibilities of that board became the
16 responsibilities of the board for communications services
17 which existed as a church body board prior to 1986 and the
18 board for Lutheran radio became a standing committee of the
19 board for communications services. So, it did continue to
20 exist but it existed as a standing committee. Thus, the
21 standing committee is in effect part and parcel of the board
22 for communications services and does not show apart from that
23 board. It is a subcommittee of the board for communications
24 services.

25 Q Thank you very much. Now, during the license term

1 did you or to your knowledge anyone at the station on behalf
2 of the station contact any particular person or entity to ask
3 for referrals of minority job applicants?

4 A Let me make sure. Did, did I or anyone at the
5 station --

6 Q That's correct.

7 A -- contact individuals?

8 Q Or entities to ask -- to specifically ask them to
9 refer minority job applicants during the license term?

10 A Yes.

11 Q Do you know who the person or entities that were
12 contacted were?

13 A I know that during the license term we, we
14 advertised in several publications targeted to minority
15 groups. The Lutheran employment project that has been
16 mentioned in, in other testimony was contacted. Lutheran
17 outreach -- north St. Louis outreach organization was
18 contacted. And I know that in, in conversations with, with
19 individuals and entities that the subject came up in a more
20 informal sort of way as well.

21 Q Now, these contacts -- did these contacts occur with
22 respect to specific job vacancies?

23 A I do not know.

24 Q Do you know when these contacts that you've just
25 described would have occurred, what year?

1 MS. SCHMELTZER: Well, you know, there is a chart.
2 I mean, you're asking him for a lot of --

3 JUDGE STEINBERG: You're talking about the
4 Appendix 6?

5 MS. SCHMELTZER: Right. I mean --

6 JUDGE STEINBERG: Attachment 6?

7 MS. SCHMELTZER: Yes.

8 BY MS. LADEN:

9 Q That's true. There, there is a chart here. You're,
10 you're correct. Can you, can you give me an idea on average
11 how many contacts per year there might have been one when,
12 when you were -- if you know, during the, the license term?

13 A No, I cannot.

14 JUDGE STEINBERG: Well, let me point out that, that
15 Attachment 6 only concerns contacts with respect to people
16 that were hired. There might have been contacts with respect
17 to people that weren't hired or general contacts.

18 MS. LADEN: That's it as well.

19 JUDGE STEINBERG: I try to make one or two a day.

20 MS. SCHMELTZER: The chart is contacts for openings.

21 JUDGE STEINBERG: Okay.

22 BY MS. LADEN:

23 Q In answer to a question I believe by Mr. Honig -- I
24 believe there was an answer to a question by Mr. Honig, I'm
25 not sure, but you've testified that you, you had no personal

1 knowledge of any black person applying for a position at KFUD
2 other than a receptionist or maintenance person during the
3 license term. Is that correct?

4 MS. SCHMELTZER: Well, if I may. That may not be
5 quite correct. I thought the question encompassed
6 secretary/receptionist.

7 JUDGE STEINBERG: Yeah.

8 MS. SCHMELTZER: Did you include that?

9 MS. LADEN: Okay. Now, I said receptionist or
10 maintenance -- secretary --

11 JUDGE STEINBERG: Secretary --

12 MS. LADEN: -- receptionist or maintenance.

13 WITNESS: I do not recall.

14 BY MS. LADEN:

15 Q Okay. Well, let me ask you this. What I'm getting
16 at is during the license term were you in a position to know
17 the race of an applicant for a position as secretary-
18 receptionist-maintenance or anything -- or any other position?

19 A My direct involvement responsibility was limited for
20 the most part to the upper-management positions, upper-level
21 positions. Those are the positions in which I became
22 involved.

23 Q So, for other positions you would not have know the
24 race of the applicant?

25 A Probably not.

1 Q Now, for those upper-level positions, you would have
2 know the race of the applicant?

3 A Yes.

4 Q Were there any applicants during the license term
5 for those positions that were black?

6 A Not that I recall.

7 JUDGE STEINBERG: How about Ms. -- Mrs. -- the woman
8 you mentioned? It's --

9 WITNESS: I'm sorry. Cari Perez.

10 JUDGE STEINBERG: She wasn't upper management
11 though.

12 MS. SCHMELTZER: Yes, she was.

13 JUDGE STEINBERG: She was? Okay. Let me find the
14 name. Lula Daniels.

15 WITNESS: Yes, Lula was on the staff prior to the
16 beginning of the license term.

17 JUDGE STEINBERG: And but she, she was a minority?

18 WITNESS: Yes.

19 JUDGE STEINBERG: And she was an upper-level
20 position?

21 WITNESS: Yes.

22 JUDGE STEINBERG: So, she had -- did -- well, did
23 she apply for the job or was she just promoted into it?

24 WITNESS: She was promoted into it.

25 JUDGE STEINBERG: Okay.

1 BY MS. LADEN:

2 Q Okay. That, that brings to mind a question. Do you
3 know whether there were any blacks promoted -- during the
4 license term were there any blacks promoted to positions in
5 management?

6 MS. SCHMELTZER: I'm going to object for the record
7 because promotions is not part of the inquiry here.

8 JUDGE STEINBERG: That's true. I'll sustain it.

9 MS. LADEN: Your Honor, could we have a few minutes
10 just to go over our notes?

11 JUDGE STEINBERG: Certainly.

12 MS. LADEN: Thank you.

13 JUDGE STEINBERG: So, we'll go off the record.

14 (Whereupon, off the record.)

15 (Whereupon, on the record.)

16 BY MS. LADEN:

17 Q Just a couple more questions, Your Honor. Reverend
18 Devantier, if you could turn to Mr. Stortz's testimony, Church
19 Exhibit 4, Attachment 14.

20 JUDGE STEINBERG: Do you want the question repeated?

21 COURT REPORTER: Yes, please.

22 JUDGE STEINBERG: Okay. Please repeat the question.

23 BY MS. LADEN:

24 Q Could you turn to Church Exhibit 4, Mr. Stortz's
25 testimony at Attachment 14? Now, have you ever seen those

1 letters? There are a series of letters here, are there not?

2 A (No audible response.)

3 Q Have you ever seen those letters before? That is to
4 say --

5 MS. SCHMELTZER: You mean other than preparing for
6 here?

7 BY MS. LADEN:

8 Q Other than preparing for this proceeding?

9 A I do not recall seeing them in 1989.

10 Q Did you know that they were being sent out?

11 A Yes. Let me, let me rephrase that. I knew that,
12 that Mr. Lauher and others were engaged in activities such as
13 this to improve our EEO activities and programs.

14 Q But you didn't specifically know that this is one of
15 the things that were being -- that these letters were being
16 sent out?

17 A Before they were sent out, no, I do not recall
18 seeing them.

19 JUDGE STEINBERG: But, but you, but you knew that
20 letters were going to be sent?

21 WITNESS: Yes.

22 BY MS. LADEN:

23 Q Did you approve the sending of -- the idea of
24 sending these letters out?

25 A I don't recall specifically being asked for my

1 approval.

2 Q Now, you talked about Lula Daniels a little bit
3 earlier as a referral source I believe. Is that correct?

4 A Yes.

5 Q And Ms. Lula Daniels died in 1985, I believe?

6 A Correct.

7 Q Did Ms. Daniels ever refer an, an applicant for --
8 or an employee for a management-level position to your
9 knowledge?

10 A No, I do not recall a specific individual that was
11 recommended for a management-level position. But my
12 recollection is that one of the individuals that she
13 recommended was considered for a management-level position at
14 the station but unfortunately left our employ before we were
15 able to do that.

16 Q Do you remember the name of that person?

17 A Yes, Ruth Clerkley.

18 Q And was she an African-American?

19 A Yes, she was.

20 MS. LADEN: I have no further questions, Your Honor.
21 Thank you very much, Reverend Devantier.

22 MS. SCHMELTZER: I have no redirect, Your Honor.

23 JUDGE STEINBERG: Okay. You're excused for purposes
24 of the direct case. Thank you very much. We appreciate your
25 testimony. And we will recess for today unless people want to

1 stay here for hours more.

2 MR. HONIG: I have a few minor clean-up matters and
3 just so that we don't run out of time on a couple of
4 ministerial things.

5 JUDGE STEINBERG: Okay.

6 MR. HONIG: Since I gather this will be our last day
7 together --

8 MS. SCHMELTZER: No, we have tomorrow.

9 MR. HONIG: Tomorrow, rather.

10 COURT REPORTER: Do you want this on the record?

11 MR. HONIG: Yes.

12 JUDGE STEINBERG: Yeah. I also reserve the right
13 not to consider these things tonight if, if in my judgment
14 it's going to take a substantial period of time.

15 MR. HONIG: These are short. First, a -- I'd like
16 to ask counsel if I could whether the draft of the Lauher
17 declaration has been sought and found.

18 MS. SCHMELTZER: It's been sought. It has not been
19 found.

20 MR. HONIG: Okay. So, they're still looking for it?

21 MS. SCHMELTZER: Well, we will look for it.

22 MR. HONIG: Can we get a full report tomorrow on
23 where it is?

24 JUDGE STEINBERG: Okay. Tomorrow morning -- it's
25 still on my -- is it? No. Tomorrow morning we will -- I

1 guess Mrs. Schmeltzer will tell us what efforts were made to
2 find it and the results of those efforts. And after tomorrow
3 -- after -- if it's not found by tomorrow morning and in my
4 opinion substantial efforts have been made to find it, the
5 matter will close.

6 MR. HONIG: Second, I ordered Mr. Miller's
7 deposition but have not received it and I'm not sure if
8 perhaps it was sent to the witness.

9 JUDGE STEINBERG: Reed Miller?

10 MR. HONIG: Reed Miller.

11 MS. SCHMELTZER: Well, we received it. We sent it
12 over to Phil Horton so you'll have to call the reporter on
13 that. But I understand Mr. Miller took a turn for the worse
14 again and Phil had not been able to get his signature. It
15 just arrived sometime this week. It hasn't been a long time.

16 JUDGE STEINBERG: He didn't waive signature?

17 MS. SCHMELTZER: No, he did not.

18 JUDGE STEINBERG: He's a lawyer. Of course he
19 wouldn't. Only nonlawyers waive signatures.

20 MR. HONIG: Third, I wanted to be sure that we were
21 all on the same page concerning surrebuttal. Am I correct in
22 understanding that tomorrow morning before we begin a written
23 summary of the surrebuttal testimony will be provided to me?

24 MS. SCHMELTZER: If I may address that, Your Honor.
25 What I'd like to suggest, we are working on actually putting

1 the entire surrebuttal in written form.

2 JUDGE STEINBERG: I, I think I indicated it was your
3 option.

4 MS. SCHMELTZER: It would be the testimony of -- and
5 we are working on that. And we are working on that. It's not
6 quite finalized. If we could start at -- well, I don't know
7 how much you all have for Marcia Cranberg. Let me ask that
8 first. Mr. Honig?

9 MR. HONIG: I'm not sure. No more than two hours, I
10 doubt.

11 MS. SCHMELTZER: Okay. If we could -- and do you
12 have much?

13 MS. LADEN: It's hard, it's hard to say but --

14 JUDGE STEINBERG: My preference is to start as early
15 in the morning as possible.

16 MS. SCHMELTZER: Well, the reason I, I would ask to
17 start at 10:00 so that we may finish up the surrebuttal
18 exhibits and give those to Mr. Honig and start Marcia Cranberg
19 immediately.

20 JUDGE STEINBERG: Okay. Your presence is needed to
21 complete that?

22 MS. SCHMELTZER: Yes.

23 JUDGE STEINBERG: Any objection?

24 MR. HONIG: And then we would, we would convene at
25 10 o'clock in the morning?

1 MS. SCHMELTZER: Um-hum.

2 MR. HONIG: Okay, and then the surrebuttal of --

3 JUDGE STEINBERG: You will get -- okay, you will get
4 tomorrow morning the way I hear surrebuttal exhibits signed
5 and you can start with your next number. What's that, 11?

6 MS. SCHMELTZER: I think it's maybe 13.

7 JUDGE STEINBERG: No. You don't have that many.

8 MS. SCHMELTZER: Maybe it's 11.

9 JUDGE STEINBERG: Yeah. Okay. So then and, you
10 know, and but if they can't do it then you'll get a detailed
11 outline.

12 MR. HONIG: Right. Now, what I would like to do as
13 a practical matter, of course I would like to be able to
14 confer with the three NAACP witnesses about who there will be
15 surrebuttal and in order to do that what I'm going to need to
16 ask is that upon being provided the, the surrebuttal testimony
17 that I be excused so that I can fax it to the three witnesses
18 and then over the lunch hour after they've had an opportunity
19 to review it confer with them and then have the surrebuttal in
20 the afternoon.

21 MS. SCHMELTZER: Your Honor, what we may be able to
22 do is get it to Mr. Honig before 10:00 if we know where he's
23 going to be and so then he could speed up that process.

24 MR. HONIG: If it could be gotten at 9:00 to my
25 office I can fax it out from there, that will work, and then

1 I'll just come down here.

2 JUDGE STEINBERG: Well, if it's going to be finished
3 by 9:00 so that you can get it to Mr. Honig then why can't we
4 start at 9:30?

5 MR. HONIG: Well, because I can't get from my office
6 to here in half an hour. Well, it's tight.

7 JUDGE STEINBERG: Well, we can let you just go
8 downstairs to the office supply store and fax it out. Try to
9 get it to Mr. Honig by 9:00.

10 MS. SCHMELTZER: We'll try to finish it tonight and
11 get it to him as soon as we can in the morning, if we can.

12 JUDGE STEINBERG: If you can.

13 MS. SCHMELTZER: If we can.

14 JUDGE STEINBERG: So, leave it at 10:00.

15 MR. HONIG: If they finish it tonight, I'll be
16 working late so fax it to me tonight.

17 MS. SCHMELTZER: Well, we will be too.

18 MR. HONIG: Let's see, the -- but in any case, would
19 I, would I then be able to do the surrebuttal in the afternoon
20 so that I can --

21 JUDGE STEINBERG: Yeah.

22 MR. HONIG: -- confer with the witnesses over lunch?

23 JUDGE STEINBERG: Yeah.

24 MR. HONIG: Okay, and the summary of the general
25 managers and their dates, that's Joint

1 Exhibit --

2 MR. HONIG: Why don't we not worry about that.
3 We'll worry about the other thing. That's --

4 MS. SCHMELTZER: Well, if we can we'll try to do
5 that as well.

6 JUDGE STEINBERG: Yeah. I mean, if you have to
7 prioritize things, that's down the list.

8 MR. HONIG: Okay. Now, I don't know --

9 JUDGE STEINBERG: Of course, that -- we can always
10 come in with, with that later because that should be
11 noncontroversial.

12 MR. HONIG: Okay. Now, other than exhibits that I
13 want to try to get in through Ms. Cranberg, I, I still have
14 actually six more exhibits two of which are very, very easy.
15 One -- I misspoke this morning. In fact, the letter that I
16 got from Jan Hutchinson was the correct letter. And there is
17 another letter that I think in fairness I ought to put in and
18 I'd like to just move those -- mark them and move them both
19 in.

20 JUDGE STEINBERG: We'll exchange them, we'll
21 identify them and if it's going to be -- exchange them.

22 MR. HONIG: Just make, just make them new exhibits.
23 What are we up to?

24 JUDGE STEINBERG: Well, Jan Hutchinson's stuff ought
25 to be together.

1 MR. HONIG: Do you want me to supplement --

2 JUDGE STEINBERG: Like we'll make an A.

3 MS. SCHMELTZER: She was 7 and 8 -- she was NAACP
4 Exhibits 7 and 8.

5 JUDGE STEINBERG: And the 7 contained the letter?
6 See, I don't think that, I don't think this is going to be as
7 noncontroversial as you think.

8 MR. HONIG: The one on top is the same letter that
9 the fax was put off and that's -- it was in fact just a one
10 page letter -- missing the signature.

11 JUDGE STEINBERG: Okay. Let, let me just -- let me
12 just do some, some housekeeping. NAACP Exhibit 7, page 5, why
13 don't we substitute -- okay, everything has been handed out.
14 NAACP page 7 -- page -- Exhibit 7, page 5, is the Jan
15 Hutchinson letter to Tom Lauher which has the bottom cut off.
16 Is there any objection to substituting the one that Mr. Honig
17 has brought with him today for the existing page 5?

18 MS. SCHMELTZER: No. Not to the substitution.

19 JUDGE STEINBERG: Mr. Zauner?

20 MR. ZAUNER: No, we have no objection.

21 JUDGE STEINBERG: Okay. So page 5 that currently
22 exists is replaced by the new page 5.

23 MR. HONIG: The second one --

24 JUDGE STEINBERG: Wait. I'm substituting. Let me
25 do this. Just to keep this stuff together, there's a

1 September 2nd, 1988 letter from Jan Hutchinson to Reverend
2 Paul Devantier which Mr. Honig passed out just now. Is there,
3 is there any objection to -- well, to, to physically add --
4 I'm not asking for objections substantively. Just
5 procedurally adding it to Exhibit 7 as page 6. Just to stick
6 it there, stick it some place.

7 MS. SCHMELTZER: No, not as a procedural --

8 JUDGE STEINBERG: Okay. So, NAACP Exhibit 7 is
9 reformed to add a page 6 which is a September 2nd letter --
10 September 2nd, 1988 letter from Jan Hutchinson to Reverend
11 Paul Devantier. Okay, and that is a purely procedural matter.
12 Okay. Has everybody read page 6? Let me ask Mr. Honig, are
13 you going to offer it at this time?

14 MR. HONIG: Yes.

15 MR. ZAUNER: Excuse me here, we're getting a little
16 confused here on the order of our documents. We're looking at
17 Attachment -- Exhibit 7?

18 JUDGE STEINBERG: Correct.

19 MR. ZAUNER: The pages are a little numbers inside
20 of circles and the go through page 4, and then page 5 would
21 be --

22 JUDGE STEINBERG: Page 5 is the one that was cut off
23 and that was the September -- that was the letter to Mr.
24 Lauher.

25 MR. ZAUNER: That's right.

1 JUDGE STEINBERG: So now -- so we've now got a
2 complete copy of that letter.

3 MR. ZAUNER: Page 6 would be the, the --

4 JUDGE STEINBERG: Page 6 --

5 MR. ZAUNER: -- letter to Paul Devantier?

6 JUDGE STEINBERG: Correct, becomes the letter to
7 Paul Devantier that was added a few minutes ago. Okay. Now
8 why don't you take -- the letter has been offered, correct,
9 Mr. Honig?

10 MR. HONIG: Yes.

11 JUDGE STEINBERG: And take a few minutes and, and
12 I'll take objections. I think the Church is ready. It's
13 whenever Mr. Zauner or Ms. Laden says okay then your
14 objections.

15 MS. LADEN: We're ready, aren't we?

16 MR. ZAUNER: Yeah.

17 MS. SCHMELTZER: First of all, Your Honor, this is
18 grossly untimely. We -- however, we would have no objection
19 to the exhibit coming in if it, if it comes in only for the
20 state of mind of the witness and not for the truth of the
21 matters asserted therein.

22 MR. HONIG: That's all it's offered for.

23 MR. ZAUNER: We have no objection on that basis.

24 JUDGE STEINBERG: It is grossly untimely. I will
25 accept, I will receive page 6 for the limited purpose of

1 showing the state of mind and not for the truth of the matters
2 asserted therein. So --

3 MR. HONIG: Your Honor, let me state --

4 JUDGE STEINBERG: NAACP Exhibit 7, page 6 is
5 received.

6 (Whereupon, the document previously
7 identified as NAACP Exhibit 7, page
8 6, is received into evidence.)

9 MR. HONIG: Let me state also that no disrespect was
10 intended by its late submission. Ms. Hutchinson had, had
11 intended to supply all she had and she realized yesterday that
12 she had inadvertently failed to include that letter.

13 JUDGE STEINBERG: Okay. Anything more for this
14 evening? Hearing nothing, we'll be in recess until --

15 MR. HONIG: There is, there is --

16 JUDGE STEINBERG: I tried.

17 MR. HONIG: There is one thing I think I can do
18 which, which will save us a lot of time. We had a
19 disagreement yesterday regarding NAACP Exhibit 60 which was
20 the list of, of classical-related music accounts and the
21 salespeople assigned to them and then some statistics that the
22 NAACP did. And it occurred to me that the -- that about all
23 we got achieved was, was the to validate all these pages of
24 the actual accounts and the actual salespeople and so forth.
25 What I would like to do, although I'll have to cut down a tree

1 to do it, is make this an NAACP exhibit, I'll undergo the cost
2 of making the copies and punching the holes and offering it as
3 is as raw data and let the parties do what they will with it
4 in their findings.

5 MS. SCHMELTZER: Now, Your Honor, it first of all is
6 not what Mr. Honig represents that it is. It's not all the
7 accounts of the radio station. It is, rather, a list of
8 potential clients which includes a lot of businesses that were
9 not accounts of the radio station. So, to the extent that
10 this was the denominator of his summary, it's a false
11 denominator.

12 JUDGE STEINBERG: Let me, let me leave it this way.
13 Your next number is 65?

14 MR. HONIG: Yes.

15 JUDGE STEINBERG: You could duplicate it, you can
16 identify it and offer it and I will hear objections to it. If
17 -- you may want to confer with Mrs. Schmeltzer to determine
18 what problems she believes she has with it and you may want to
19 make a determination that you don't want to do that, but we're
20 not going to do it tonight.

21 MR. HONIG: I'll, I'll make copies.

22 JUDGE STEINBERG: Okay.

23 MR. HONIG: And do you want to do the other
24 straightforward --

25 JUDGE STEINBERG: No. We'll do that --

1 MR. HONIG: Do that tomorrow?

2 JUDGE STEINBERG: We'll do that when, when the
3 direct case is finished, we will finish the rebuttal case.

4 MR. HONIG: Okay. So you'll know, judge, the only
5 other three, three exhibits that we have are 21 --

6 JUDGE STEINBERG: Well, I've got a list and I'll
7 tell you what hasn't been received, 21, 50, 53, 54, 55, 56,
8 57, 59, 60, 61, 62.

9 MR. HONIG: That's right.

10 JUDGE STEINBERG: And I've been keeping track.

11 MR. HONIG: Okay.

12 JUDGE STEINBERG: And so you can do what you wish
13 with Ms. Cranberg and then whatever is left, that will be --
14 I'll ask you to complete your rebuttal case and then we
15 will -- so hearing nothing more, we will be in recess until
16 tomorrow morning at 10:00 a.m. Thank you very much.

17 (Whereupon, the hearing adjourned at 5:30 p.m. to
18 reconvene on Friday, June 24, 1994 at 10:00 a.m.)

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